

ARKANSAS SUPREME COURT

No. CR 06-587

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered February 15, 2007

MARCUS YOUNG
Appellant

PRO SE APPEAL FROM THE CIRCUIT
COURT OF DREW COUNTY, CR 2003-
184, HON. ROBERT BYNUM GIBSON,
JUDGE

v.

STATE OF ARKANSAS
Appellee

REVERSED AND REMANDED.

PER CURIAM

In 2004, appellant Marcus Young entered a plea of guilty to the offense of committing a terroristic act and was sentenced by a jury to 240 months' imprisonment. Appellant appealed from the sentence, and the Arkansas Court of Appeals affirmed. *Young v. State*, CACR 04-925 (Ark. App. Apr. 13, 2005).

Appellant, who was represented by counsel, timely filed in the trial court a verified petition for postconviction relief under Ark. R. Crim. P. 37.1. He subsequently filed two amended Rule 37.1 petitions, neither of which was verified. Both amendments repeated the grounds in the original petition and added new grounds. The trial court denied relief in the following order:

The Rule 37 petition filed herein is denied because neither the defendant nor his attorney verified the petition. The clerk is ordered to provide file-marked copies of this order to the attorneys of record. It is so ordered.

Appellant brings this appeal from the order.

Arkansas Rule of Criminal Procedure 37.1(d) requires that a petition seeking relief pursuant

to the rule be verified. The verification requirement for a postconviction-relief petition is of substantive importance to prevent perjury. *Carey v. State*, 268 Ark. 332, 596 S.W.2d 688 (1980). To serve this purpose, a petitioner must execute the verification, and if the petitioner is represented by counsel, counsel may not sign and verify the petition for him. *Boyle v. State*, 362 Ark. 248, 208 S.W.3d 134 (2005) (*per curiam*). A trial court cannot consider the issues in a petition which does not comply with the verification requirement of the rule. *See Shaw v. State*, 363 Ark. 156, ____ S.W.3d ____ (2005) (*per curiam*).

Appellant urges this court to find that the trial court erred in denying postconviction relief without an evidentiary hearing on the basis of failure to verify the petition. He contends that the court acquired jurisdiction to consider the claims for postconviction when he filed the initial verified petition, but he does not clarify whether he is contending that the court should have ruled on all the issues raised in the two unverified amended petitions or was limited to addressing the issues raised in the original petition. The appellee argues that the court's ruling was proper as the amended unverified petitions "superseded" the initial petition.

We cannot agree with the appellee's position that the trial court was correct to decline to consider the allegations raised in the initial petition, which was verified. While it was within the purview of the court to dismiss the amended petitions either because it had not granted leave for the amendments to be filed or because neither was verified, the court was obligated to rule on claims raised in the initial petition which was timely filed and verified in accordance with the rule. Accordingly, the order is reversed and the matter is remanded to the trial court so it may enter an order addressing the merits of the original petition. We do not reach the issue of whether the court was obligated to hold an evidentiary hearing on the issues contained in the Rule 37.1 petition. An

evidentiary hearing should be held in a postconviction proceeding unless the files and the records of the case conclusively show that the prisoner is entitled to no relief. *Sanders v. State*, 352 Ark. 16, 98 S.W.3d 35 (2003). When the trial court takes up the issues raised in the petition, it may determine at that time whether a hearing is necessary.

Reversed and remanded.